

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: A. Judiciary Committee Analyst: Gloria McConnell Bill Number: AB 1671

Related Bills: _____ Telephone: 845-4336 Amended Date: 06/30/99

Attorney: Janet Ballou Sponsor: _____

SUBJECT: Child Support Enforcement

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

☒ AMENDMENTS IMPACT COLLECTIONS. A new collection estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

☒ DEPARTMENT POSITION CHANGED TO Support.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED 04/15/99 STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

As this bill directly affects the Franchise Tax Board (FTB), it would

1. Require that out-of-state child support delinquencies be processed through the financial institutions data match (FIDM) and levies be made thereon, as mandated by federal law.
2. Create a lien by operation of law (statutory lien) on an obligor's personal property for all amounts of overdue support regardless of whether the amounts have been adjudicated or otherwise determined. However, the child support statutory lien would have priority over any competing state tax lien only if the child support lien is filed with the Secretary of State (SOS) or the levy is made on the property before the state tax lien is filed with the SOS.
3. Make the following technical corrections to child support collection laws administered by Franchise Tax Board (FTB) under the Revenue and Taxation Code (RTC) by replacing a repealed section number of the Welfare and Institutions Code (WIC) with the number of the new WIC section under which counties receive incentive payments for child support collections and replacing the formal name of Statewide Automated Child Support System (SACSS) with a generic reference to California's automated child support system.

This analysis does not address the other child support enforcement provisions of the bill.

Board Position:

<input checked="" type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department Director

Date

Gerald Goldberg

8/17/1999

SUMMARY OF AMENDMENT

This amendment adds the above described provision for out-of-state delinquencies (item #1) and allows a state tax lien to compete against a child support statutory lien based on the date the state tax lien is filed with the Secretary of State, as indicated in the second sentence of the above item #2.

EFFECTIVE DATE

This bill would be operative and effective January 1, 2000. However, the provisions relating to collection of out-of-state delinquencies through FIDM would be operative July 1, 2001.

PROGRAM HISTORY/BACKGROUND

Under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), each state is mandated to develop and operate by October 1, 1998, a FIDM system, using automated data exchanges to the maximum extent feasible, in coordination with each financial institution doing business in the state. The financial institution is required to provide for each calendar quarter the name, record address and SSN for each noncustodial parent who maintains an account at the institution and who owes past due support, as identified by the state by name and SSN.

AB 702 (Stats. 97, Ch. 697) was California's response to the federal mandate. FTB, through a cooperative agreement with the Department of Social Services (DSS) and in coordination with financial institutions doing business in the state, has implemented California's FIDM. On a quarterly basis, the system matches obligors who owe past-due child support with accounts maintained at financial institutions as required by the federal mandate provided in the Welfare Reform Act. Upon a match, FTB issues levies on the bank account(s), as appropriate.

Under federal law, each state must respond within five business days to another state's request to enforce its child support order. The information submitted by that state constitutes a certification by that state that it has complied with all procedural due process requirements applicable to the case. Under a federal action transmittal, a state must make available to other states its FIDM process to enforce that other state's child support orders.

SPECIFIC FINDINGS

Currently California law does not allow FIDM to be used for the enforcement of out-of-state child support obligations. In addition, under current law, FTB may not levy as a result of a data match without a county first referring the out-of-state case to FTB through the FIDM process.

This bill would require the Department of Justice (DOJ) to compile a list of any requests made by other states and submit that list to FTB for incorporation into its FIDM process. Upon a match, FTB would be authorized to levy on the bank account to enforce collection of the other state's child support obligation. Any collections made by FTB would be transmitted to the referring state.

Policy Considerations

- This bill responds to a federal mandate that requires states to provide lien treatment for resident-obligors that is the same whether the child support obligation accrued inside or outside California and to use its FIDM to process these out-of-state obligation.
- This bill allows a filed personal property state tax lien to compete with a statutory personal property child support lien and, hence, allows FTB to continue its responsibility to effectively enforce the personal income tax laws.
- It may be unprecedented to create a lien for amounts that have not been adjudicated or otherwise been determined by a legal forum. It is unclear whether allowing a statutory lien for child support to arise for amounts that are unadjudicated or otherwise undetermined affords due process to noncustodial parents. Additionally, allowing the lien to arise without regard to adjudication or determination of the amount due goes beyond the federal requirement for merely a state procedure to establish a statutory lien for child support. In addition, it appears the bill does not meet the federal requirement that the states must have procedures for real property statutory liens.

Implementation Consideration

Personal Property Lien Provision

The provision that establishes the statutory personal property child support lien and allows for the filed personal property state tax lien to compete with the statutory child support lien generally would not significantly affect the collection of either FTB's personal income tax or child support delinquency program. Staff does not anticipate that the lien provision in this bill would affect FTB's tax or child support collection workloads, readily change FTB's current practice of filing notices of state tax liens with the Secretary of State or change its child support delinquency program current practices.

Out-of-state Child Support Delinquencies/FIDM Provision

The provision adding out-of-state delinquencies to the FIDM process potentially would create a workload increase in the number of accounts that would be subject to levy as a result of FIDM and increase in the number of phone calls received within FTB's existing child support delinquency program. Additionally, modifications to FTB's existing FIDM system and processing to accommodate submissions via DOJ and to accommodate the transmission of collections to the referring state, as provided for under this bill, are expected to begin January 1, 2000. Staff anticipates the programming and testing to accept these accounts would take approximately 18 months; therefore, this provision could be operational July 1, 2001, as required by this bill.

Staff assumes it would process these out-of-state cases similar to the way it processes accounts for the counties through the FIDM. In the event of an obligor's dispute as to the amount owed or hardship claim, staff anticipates

it would work with the obligor and/or other state to resolve the issue and, as warranted, release any levies.

Staff has not been able to obtain information from other states that would indicate the number of accounts that may be submitted to FTB for the FIDM process under this bill, the number of resulting levies, or the number of disputes or hardship claims. However, based on data from the federal intercept program, staff estimates that there are approximately 2 million child support delinquencies owed to states other than California. It is assumed, for purposes of this analysis, that because these delinquencies are on the federal intercept file, the debts are due and payable, the other state has provided due process to the obligor and otherwise would meet the basic standard for referral through the DOJ. As a result of this and other data and assumptions, staff estimates that during fiscal year (FY) 2001/02, up to 50,000 out-of-state delinquencies may be forwarded to FTB via DOJ, and for FY 2002/03, up to an additional 50,000 out-of-state delinquencies may be forwarded to FTB via DOJ, to reach an inventory of 100,000 accounts annually.

FISCAL IMPACT

Departmental Costs

Personal Property Lien Provision

Staff anticipates the departmental costs associated to implement the personal property lien provisions would be accommodated within FTB's existing budget.

Out-of-state Child Support Delinquencies/FIDM Provision

For the modifications to the FIDM systems and for staff to support the workload increase attributable to the out-of-state delinquencies submitted to FTB via DOJ, FTB's departmental costs would increase as follows, based on FTB's past experiences with other programs:

	Fiscal year 2000/01		Fiscal year 2001/02		Fiscal year 2002/03 (baseline)	
	One-time	Ongoing	One-time	Ongoing	One-time	Ongoing
Developmental	\$33,740	\$31,200				
Staff/support/equipment			\$77,450	\$575,090	\$144,940	\$1,030,570
# personnel		.5		9.8		17.8

Collection Estimate

Staff does not anticipate that the lien provision would significantly impact the collection of child support or personal income tax delinquencies by FTB. Because the provisions affecting FIDM relate to out-of-state child support delinquencies, this provision also should not significantly affect the collection of California's child support delinquencies.

BOARD POSITION

Support.

The FTB voted in its meeting of July 6, 1999, to support this bill if amended to allow a notice of state tax lien filed with respect to personal property to compete with the statutory child support lien, as accomplished in this amendment.